

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Charlottesville Division**

MATAN GOLDSTEIN,

Plaintiff,

v.

THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA, *et al.*,

Defendants.

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Case No. 3:24-cv-00036-RSB-JCH

**DEFENDANTS THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA,
RECTOR ROBERT D. HARDIE, AND PRESIDENT JAMES E. RYAN’S
MOTION FOR LEAVE TO FILE UNDER SEAL**

Defendants The Rector and Visitors of the University of Virginia, Rector Robert D. Hardie, and President James E. Ryan (collectively, the “UVA Defendants”), by and through their undersigned counsel, hereby move the Court to file Exhibit A to their Motion to Dismiss for Lack of Standing and Failure to State a Claim under seal pursuant to Local Rule 9 and applicable federal law. The UVA Defendants also move to file their unredacted Memorandum in Support of their Motion under seal, because it contains limited references to the contents of Exhibit A, including details of a non-party’s identity.

Although the public has a presumptive “right to inspect and copy judicial records and documents,” a party may overcome this right by showing “specific [and compelling] reasons to justify restricting access to the information.” *RLI Ins. Co. v. Nexus Servs., Inc.*, No. 5:18-cv-0066, 2020 WL 2616516, at *2 (W.D. Va. May 22, 2020). Other courts have emphasized that “the privacy interests of non-parties . . . outweighs the public’s interest in knowing the identity of the non-parties.” *See, e.g., Moussouris v. Microsoft Corp.*, No. 15-cv-1483, 2018 WL 1159251, at *6 (W.D. Wash. Feb. 16, 2018). Thus, “[r]equests to seal personal information are often granted to

protect an individual’s privacy and prevent exposure to harm, particularly where the information relates to nonparties.” *In re Bofl Holding, Inc. Sec. Litig.*, No. 15-cv-2324, 2021 WL 3700749, at *8 (S.D. Cal. July 27, 2021) (collecting cases).

Exhibit A to the UVA Defendants’ Motion to Dismiss is a true and accurate copy of a Report of an Alleged Honor Offense, referenced in Plaintiff’s Complaint, ¶ 186, et seq., as the “Honor Charge,” which was filed against Plaintiff by another student at the University. The report in its entirety qualifies as an educational record of both Plaintiff and the other student under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, which protects the privacy rights of students in their educational records. Plaintiff has raised allegations of “a bogus and false Honor Charge” filed by another student and placed this Honor Charge directly at issue in this lawsuit. (Compl. ¶¶ 186-201.) Accordingly, the UVA Defendants may disclose to this Court the Honor Charge at issue in this lawsuit. *Doe v. Massachusetts Inst. of Tech.*, 46 F.4th 61, 75 (1st Cir. 2022) (“Under the FERPA regulations, when a student ‘initiates legal action against’ a school, the school ‘may disclose to the court, without a court order or subpoena, the student’s education records that are relevant for the [school] to defend itself.’” (quoting 34 C.F.R. § 99.31(a)(9)(iii)(B))). The student who allegedly filed the Honor Charge is not a party to this lawsuit and, thus, may continue to assert privacy rights under FERPA. Accordingly, the UVA Defendants seek to maintain that document under seal in accordance with their obligations. At least one other Court in this district has found that documents and records protected by FERPA involving non-party students raise valid privacy concerns and are properly kept confidential. *Doe v. Shenandoah Univ.*, No. 5:21-CV-00073, 2023 WL 4186017, at *13 (W.D. Va. June 26, 2023) (“The non-party student records subject to this Order are to be treated as Confidential . . .”).

In addition to Exhibit A, the UVA Defendants seek to make limited redactions to portions of their memorandum in support of their motion to dismiss in which the contents of Exhibit A are quoted or directly discussed, including where details about the identity of the other student could be revealed. The redacted information is relevant to UVA's arguments but should be protected from public scrutiny. *Doe v. Shenandoah Univ.*, No. 5:21-CV-00073, 2023 WL 4186017, at *4 (W.D. Va. June 26, 2023) ("The Court also needed to protect the privacy of students who are not parties in this case."); *Moussouris*, 2018 WL 1159251, at *6 (identifying information of non-parties outweighed by privacy concerns). Permitting UVA to file its unredacted memorandum in support of its motion to seal, along with a public version of its memorandum containing limited redactions will protect the privacy of the relevant non-party while protecting the public's presumptive right to access records.

The UVA Defendants, by counsel, have provided notice pursuant to 20 U.S.C. § 1232g and 34 C.F.R. § 99.31(a)(9) to the relevant non-party student that they intend to file the document under seal with the Court. The non-party student does not object to the filing of the Honor Charge under seal. Plaintiff likewise does not oppose the relief requested herein.

For the foregoing reasons, the UVA Defendants respectfully request that the Court grant leave to file the unredacted Memorandum in Support of their Motion to Dismiss, and the accompanying Exhibit A, under seal. A draft order is attached.

Dated: July 16, 2024

/s/Jonathan T. Blank
 Jonathan T. Blank (VSB No. 38487)
McGuireWoods LLP
 323 2nd St. SE, Suite 700
 Charlottesville, VA 22902
 Tel.: (434) 977-2509
 Fax: (434) 980-2258
 jblank@mcguirewoods.com

Farnaz F. Thompson (VSB No. 75982)

McGuireWoods LLP

888 16th Street N.W., Suite 500

Black Lives Matter Plaza

Washington, D.C.

Tel: (202) 857-1000

Fax: (202) 857-2737

fthompson@mcguirewoods.com

Heidi E. Siegmund (VSB No. 89569)

Juliet B. Clark (VSB No. 96918)

McGuireWoods LLP

800 East Canal Street

Richmond, VA 23219

Tel.: (804) 775-1000

Fax: (804) 775-1061

hsiegmund@mcguirewoods.com

jbclark@mcguirewoods.com

*Counsel for Defendants the Rector and
Visitors of the University of Virginia,
Robert D. Hardie, and James. E. Ryan*

CERTIFICATE OF SERVICE

I certify that on July 16, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/Jonathan T. Blank
Jonathan T. Blank

*Counsel for Defendants the Rector and
Visitors of the University of Virginia, Robert
D. Hardie, and James. E. Ryan*